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In The

Supreme Court of the United States

October Term 1973

Docket No. 73-5448

SAMUEL ALDRIDGE,

Petitioner,

- vs -

STATE OF NEW JERSEY,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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STATEMENT OF THE CASE

Petitioner, Samuel Aldridge, was charged in Essex County Indictment No. 2456-71 with the murder of Eddie Lee Jones on December 25, 1971. He was tried before the Honorable James T. Owens, Judge, Superior Court, and a jury on June 12, 13 and 14, 1972.

Petitioner was found guilty of manslaughter and on July 12 was sentenced by Judge Owens to a term of seven to ten years in State Prison.

On direct appeal to the New Jersey Superior Court, Appellate Division, petitioner's conviction was affirmed in an unpublished opinion dated May 8, 1973 (Petitioner's appendix "A"). His petition for certification to the New Jersey Supreme Court was denied on June 29, 1973 in an order reported at 63 N.J. 502.

Petitioner filed his Petition for a Writ of Certiorari to the Supreme Court of New Jersey on September 15, 1973. The Petition was given docket No. 73-5448 of the October, 1973 term.

REASONS WHY THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED

A. This Court lacks jurisdiction under 28 U.S.C. § 1257(3) to grant the writ prayed for.

Petitioner seeks a Writ of Certiorari to the New Jersey Supreme Court under the provisions of 28 U.S.C. § 1257 which reads in pertinent part:

> Final judgements or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * *
>
> (3) By Writ of Certiorari where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

This language constitutes a jurisdictional limitation imposed by Congress upon the Supreme Court's authority to review judgments of State courts. It has long been established that in exercising its jurisdiction under 28 U.S.C. § 1257(3), this Court "will not decide federal constitutional issues raised here for the first time on review of State court decisions." *Cardinale v. Louisiana*, 394 *U.S.* 437, 438, 89 *S. Ct.* 1162, 22 *L.Ed* 2*d* 398, 400 (1969). As early as the case of *Crowell v Randell*, 10 *Pet.* 368, 9 *L.Ed.* 458 (1836) it was held that this Court has no jurisdiction unless a federal question was raised and decided in the State court below. "If both of these do not appear on the record, the appellate jurisdiction fails." 10 *Pet.* 368, 391, 9 *L.Ed.*458, 467.

The State submits that the petitioner has not demonstrated that this Court has jurisdiction to grant his petition for a writ of certiorari under 28 U.S.C. § 1257(3). On his direct appeal to the Appellate Division of New Jersey Superior Court, petitioner's designated counsel raised the following points:

POINT I —THE COURT ERRED IN FAILING TO GRANT DEFENDANT'S MOTIONS FOR JUDGMENT OF ACQUITTAL WITH RESPECT TO THE FIRST DEGREE MURDER CHARGES.....

POINT II —THE VERDICT OF THE JURY WAS PROBABLY THE RESULT OF COMPROMISE OR CONFUSION SINCE THE TESTIMONY OF NO WITNESS SUPPORTED THE MANSLAUGHTER THEORY.....

POINT III —THE COURT ERRED IN INTERFERING WITH THE DEFENDANT'S ORDER OF PRESENTATION OF HIS CASE .....

POINT IV —THE PROSECUTION PROVIDED NEGLIGENT INVESTIGATION IN ITS ON-THE-SCENE QUESTIONING RELATED TO THE DECEASED'S PIPE .....

POINT V —THE PROSECUTOR'S COMMENTS ON SUMMATION WERE IMPROPER..

None of these points are of constitutional dimension, and were not argued as such. The petitioner also advanced the following arguments *pro se:*

A. DEFENDANT WAS PREJUDICED WHEN THE JUDGE INADVERTENTLY INSTRUCTED THE JURY THAT DEFENDANT HAD PLED GUILTY.

The trial court charged that "the defendant has pleaded guilty to the indictment. . ." (3T10:6). This error was corrected at the suggestion of defense counsel by means of a supplementary charge. (3T31:25; 32:1-3; 33:10-20).

B. WHEN THE JUDGE RE-CHARGED THE LAW OF MURDER, MANSLAUGHTER AND SELF-DEFENSE HE OMITTED MUCH OF HIS EARLIER INSTRUCTIONS.

C. DEFENDANT'S SENTENCE WAS EXCESSIVE.

D. THE PROSECUTOR'S CONDUCT WAS IMPROPER IN THAT (1) THE PATHOLOGIST WAS PERMITTED TO ATTRIBUTE DECEASED'S FACIAL INJURIES TO RECENT ORIGIN WHEREAS THE PROSECUTOR KNEW OF DECEASED'S PRIOR FIGHT AND HOSPITAL TREATMENT FOR EYE INJURIES (2) AN AGREEMENT AT PRE-TRIAL CONFERENCE NOT TO PRESS THE MURDER ONE ASPECT WAS IGNORED (3) POLICE STATEMENTS MADE BY COLLIER AND RODGERS WHICH CONFLICTED WITH TRIAL TESTIMONY WERE NOT SENT TO THE JURY.

E. DEFENDANT WAS DENIED EFFECTIVE TRIAL COUNSEL IN THAT (1) HIS ATTORNEY PERMITTED THE STATE TO MAKE DEFENDANT RE-ENACT THE INCIDENT BUT THE DEMONSTRATION DID NOT INCLUDE THE USE OF A PIPE BY THE DECEASED (2) EVIDENCE WHICH CONCLUSIVELY PROVED THE ORIGIN OF DECEASED'S BLACK EYES SUCH AS HOSPITAL REPORTS AND EYEWITNESSES TO THE FIRST FIGHT WAS NOT PRESENTED (3) THE SUBMITTED REQUESTS FOR INSTRUCTIONS TO THE JURY WERE NOT SO FAVORABLE AS THE LAW PERMITS (4) CROSS EXAMINATION OF COLLIER AND RODGERS WAS WEAK.

Again, none of these points were couched in constitutional terms and were not considered as such by the Appellate Division in its opinion.

Moreover, petitioner advanced no new arguments in his petition to the New Jersey Supreme Court, nor did he rephrase his prior contentions in constitutional array. It is apparent that petitioner is raising his constitutional issues of due process and fair trial for the first time in this forum, and that he thus fails to present a case cognizable under 28 *U.S.C.* § 1257(3).

The reason for this jurisdictional limitation was well explicated by Justice White in *Cardinale v. Louisiana, supra* In that case, although certiorari had been granted to consider petitioner's argument that a Louisiana statute that required that confessions be admitted into evidence in their

entirety was unconstitutional, "the fact emerged in oral argument that the sole federal question argued here had never been raised, preserved, or passed upon in the State courts below." 394 *U.S.* at 438, 22 *L.Ed.* 2*d* at 400. In dismissing the writ for want of jurisdiction, this court pointed out that in a federal system, it is important that State courts have the first opportunity to consider constitutional challenges to their statutes and procedures, and that since the petitioner had not raised his federal issue below, he was precluded from doing so for the first time in this Court. 294 *U.S.* at 439.

Even if it were conceded *arguendo* that petitioner's contentions raised issues of substantial constitutional dimension, his failure to demonstrate or even allege that these contentions were presented to or considered by the State courts below precludes this Court from granting the Writ. He has failed to comply with Rule 23(1)(f) of the Rules of the Supreme Court, 28 U.S.C.A. in that he has failed to set out any places in the record below where "the federal questions sought to be reviewed were raised; the method of raising them; and the way in which they were passed upon by the court; . . . as will show that the federal question was timely and properly raised so as to give this court jurisdiction to review the judgment on Writ of Certiorari."

An examination of the opinion of the Appellate Division of the New Jersey Superior Court (petitioner's appendix "A") reveals that the court had no occasion to consider any constitutional issues affirming petitioner's conviction Generally, when the highes

ally, when "the highest State court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the State courts, unless the aggrieved party can affirmatively show the contrary." *Street v. New York*, 394 *U.S.* 576, 582, 89 *S.Ct.* 1354, 22 *L.3d.* 2*d* 572, 579 (1969); *Bailey v. Anderson*, 326 *U.S.* 203, 66 *S.Ct.* 66, 90 *L.Ed.* 3 (1945). The State submits that petitioner has made no such affirmative showing in his petition.

The recent case of *Chambers v. Mississippi*, __*U.S.*__, 93 *S.Ct.*__, 35 *L.Ed.* 2*d* 297 (1973), cited by petitioner, is not to the contrary since in *Chambers*, the petitioner pre-

served his rights to challenge certain State rules of evidence on constitutional grounds by raising the due process issue in a timely motion for a new trial, and by reasserting his constitutional claims on appeal. __ *U.S.*__ n. 3, 35 *L.3d.* 2*d* at 305, n.3. Moreover, the State did not contest jurisdiction in *Chambers* and conceded that the federal issue had been properly raised below and necessarily decided by the Mississippi Supreme Court. __ *U.S.* __ 35 *L.Ed.* 2*d* at 314 (concurring opinion of Justice White)

In conclusion, the State reiterates that the petitioner has utterly failed to demonstrate that he at any time raised a federal question in the State courts below, so as to endow this court with jurisdiction under 28 U.S.C. § 1257(3) to issue a writ of certiorari. Such jurisdiction

> . . . cannot arise from mere inference, but only from averments so distinct and positive as to place it beyond question that the party bringing a case here from such court intented to assert a Federal right. *Oxley Stave Co. v. Butler County,* 166 *U.S.* 648, 655, 17 *S.Ct.* 709, 41 *L.Ed.* 1149 (1897).

CONCLUSION

For the reasons stated herein, respondent respectfully urges that the petition for a writ of certiorari be denied.

Respectfully submitted,

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